

**United States Department of Labor  
Employees' Compensation Appeals Board**

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| _____  | ) |                                  |
| <b>T.D., Appellant</b>                       | ) |                                  |
|  | ) |                                  |
| <b>and</b>                                   | ) | <b>Docket No. 20-0754</b>        |
|  | ) | <b>Issued: December 31, 2020</b> |
| <b>U.S. POSTAL SERVICE, LOS ANGELES</b>      | ) |                                  |
| <b>PROCESSING &amp; DISTRIBUTION CENTER,</b> | ) |                                  |
| <b>Los Angeles, CA, Employer</b>             | ) |                                  |
| _____  | ) |                                  |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On February 18, 2020 appellant filed a timely appeal from a January 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the January 16, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish disability from work on August 28 and 29, 2019 causally related to her accepted employment injury.

## **FACTUAL HISTORY**

On April 4, 2008 appellant, then a 47-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injuries to three toes on her left foot when a pit operator driving a forklift backed through plastic strips and struck her left foot while in the performance of duty. OWCP initially accepted the claim for a crush injury of the left toe(s) and fracture of one or more phalanges of the left foot, and subsequently expanded acceptance of the claim to include gangrene and a mood disorder secondary to an industrially-related general medical condition. An OWCP nurse's report dated September 5, 2008 related that appellant's great and second toes had partially auto-amputated.

Appellant stopped work on the date of injury and returned to full-time regular-duty work on March 10, 2011. OWCP paid her wage-loss compensation on the supplemental rolls as of May 20, 2008 and on the periodic rolls from April 12, 2009 until her return to work on March 10, 2011. Following a schedule award, it again paid appellant wage-loss compensation for intermittent disability commencing March 14, 2014.

On October 29, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for intermittent leave without pay on August 28 and 29, 2019. In an accompanying time analysis form (Form CA-7a) she claimed 3.25 hours of wage loss on August 28, 2019 and 4 hours of wage loss on August 29, 2019 due to a medical treatment of her accepted conditions.

In development letter dated November 4, 2019, OWCP requested that appellant submit medical evidence supporting treatment on August 28 and 29, 2019. It afforded her 30 days to provide the requested information.

On January 6, 2020 OWCP received progress notes dated November 11, 2019 from Dr. Lishan Workenah, a psychiatrist, who noted appellant's last three encounter dates, which included August 28, 2019.

By decision dated January 16, 2020, OWCP denied appellant's claim for wage-loss compensation due to time lost from work to attend medical appointments on August 28 and 29, 2019. It found that no medical evidence was submitted following the November 4, 2019 development letter.

## **LEGAL PRECEDENT**

OWCP's procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.<sup>3</sup> A claimant who has returned to work following an accepted injury

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.<sup>4</sup> Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>5</sup> The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.<sup>6</sup> For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.<sup>7</sup>

In the case of *William A. Couch*,<sup>8</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

### ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant filed a claim for wage-loss compensation on October 29, 2019 alleging wage loss due to her attending podiatric and psychiatric appointments on August 28 and 29, 2019, respectively. In a development letter dated November 4, 2019, OWCP requested that she submit medical evidence substantiating her attendance at medical appointments on August 28 and 29, 2019 and afforded her at least 30 days to submit such evidence. In the decision dated January 16, 2020, it found that no evidence had been received following the November 4, 2019 development letter. However, on January 6, 2020 OWCP did receive a series of progress reports from Dr. Workenah, which included mention of an evaluation on August 28, 2019.

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim properly submitted to OWCP be reviewed and addressed.<sup>9</sup> For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the January 16, 2020 decision. Following this and other

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<sup>4</sup> *Id.* at Chapter 2.901.19(a); *see M.B.*, Docket No. 19-1049 (issued October 21, 2019); *T.S.*, Docket No. 19-0347 (issued July 9, 2019); *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

<sup>5</sup> *Id.* at Chapter 2.901.19(a)(2).

<sup>6</sup> *Id.* at Chapter 2.901.19(a)(3).

<sup>7</sup> *Id.* at Chapter 2.901.19(c).

<sup>8</sup> 41 ECAB 548 (1990).

<sup>9</sup> *J.S.*, Docket No. 19-1073 (issued January 6, 2020); *T.J.*, Docket No. 14-1854 (issued February 3, 2015); *see Yvette N. Davis*, 55 ECAB 475 (2004).

such further development as OWCP deems necessary, it shall issue a *de novo* decision on the merits of appellant's claim for compensation.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 16, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 31, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board